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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

SAMANTHA SHARKEY
1911 N. Vagedes Avenue
Fresno, CA 93705

OAH No. 2010070849

Vocational Nurse License No.
VN 156354

Petitioner.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on November 13, 2010.

IT IS SO ORDERED this 14th day of October, 2010.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of:

OAH No. 2010070849

SAMANTHA SHARKEY,

Vocational Nurse License No. VN 156354

Petitioner.

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 28, 2010, in Sacramento, California.

Elena Almanzo, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Samantha Sharkey (petitioner) appeared on her own behalf. She was accompanied by her husband, James E. Sharkey.

Evidence was received, the record was closed, and the matter was submitted for decision on July 28, 2010.

FACTUAL FINDINGS

1. On January 29, 1992, the Board of Vocational Nursing and Psychiatric Technicians (Board) issued vocational nurse license number VN 156354 (license) to petitioner.

2. On August 30, 2006, an accusation (Accusation) was issued against petitioner. The Accusation sought to revoke petitioner's license based upon: (1) her conviction on May 18, 2004, for engaging in sexual relations with a prisoner while she was a state prison employee, a felony; and (2) while acting as an employee and licensed vocational nurse (LVN) at Corcoran State Prison between November 29 and December 30, 2002, engaging in sexual activity with an inmate. Petitioner did not file a notice of defense to the Accusation. On January 2, 2007, the Board issued a default decision and order (Default Decision) revoking petitioner's license, effective February 1, 2007. On January 23, 2007, the Board

issued an order delaying the effective date of the Default Decision to review petitioner's petition for reconsideration (Petition for Reconsideration). On February 9, 2007, the Board denied petitioner's Petition for Reconsideration, effective February 11, 2007.

3. In 2002, when petitioner was employed as an LVN at Corcoran State Prison, James E. Sharkey, an inmate at the time, was one of her patients. They engaged in a sexual relationship. Because petitioner was a state employee and a peace officer, her relationship with Mr. Sharkey was illegal. She was convicted of a felony, and was incarcerated in Valley State Prison for Women from September 8, 2004, to May 2005.

4. Karen Logue, Assistant Unit Supervisor, was petitioner's parole officer. On January 16, 2007, Ms. Logue wrote a letter confirming that petitioner was released to parole on June 18, 2005.¹ According to Ms. Logue, petitioner's overall performance on parole was "above average." Petitioner was "cooperative and polite with parole authorities, maintained a stable residential pattern, maintained full-time employment, and incurred no parole violations." Due to petitioner's positive performance on parole, she was discharged early on July 18, 2006.

5. Petitioner and Mr. Sharkey are married. They have a three-year-old son. Mr. Sharkey completed an 18-month Academy Rehabilitation Program for Men at the Fresno Rescue Mission (Mission). Petitioner and Mr. Sharkey participated in the Couples Group at the Mission. Mr. Sharkey made so much improvement that the Mission hired him as an Addiction Counselor and Manager of the Mission's Auto Sales Department.

6. From July 13, 2005, to February 1, 2007, petitioner worked as an LVN charge nurse for Raintree Convalescent Home (Raintree). While in this position, she supervised nursing assistants, administered prescribed medications, monitored residents' behavior, and provided prescribed treatments. She left that job when she went on maternity leave and lost her license. She returned in May 2007 to work as a medical records, central supply and appointment coordinator. She left on July 30, 2007, due to her excessive absences caused by post-maternity health issues. Since that time, petitioner has stayed at home taking care of her son.

7. Sally Wee, RN, was the Director of Nursing at Raintree while petitioner was employed there. Ms. Wee wrote a letter of support dated April 26, 2010. In her letter, Ms. Wee states that petitioner "did well [in] her role as a charge nurse with her duties and responsibilities well delivered and handled with professionalism, tact, diligence, and a lot of dedication and hardwork." According to Ms. Wee, petitioner was one of her best LVN's.

8. Since her license was revoked, petitioner has continued to participate in continuing education. She received a Certificate of Completion from Homestead Schools, Inc., certifying that, on April 9, 2010, she completed 15 contact hours of "Medication Errors and How to Avoid Them," 30 hours of "AIDS Update," and 10 hours of "Codependency."

¹ Petitioner was in a pre-parole community building workshop from May 1 to May 27, 2005.

9. Both petitioner and her husband are actively involved in their church, its ministries and support groups. They conduct a weekly Celebrate Recovery 12-step class at their church. Petitioner is on the church board. She volunteers as the nursery care coordinator, and she participates in the Without a Word women's ministry and the prayer-team ministry.

10. At the hearing, petitioner recognized that the manner in which her relationship with Mr. Sharkey began was "unprofessional" and "unethical." But she testified that he was her "soulmate" and that both of them had grown and developed since their relationship began. They have been through counseling. According to petitioner, her faith has made her stronger. Petitioner described her relationship with Mr. Sharkey as an "unusual occurrence" that would never happen again. Petitioner described nursing as the "only career she wants to do." If her license is reinstated, she would like to work in geriatrics taking care of the elderly.

11. Mr. Sharkey testified in support of petitioner's reinstatement. He and petitioner have been together for eight years. He described petitioner as a "loving and caring nurse."

12. Petitioner submitted 11 letters supporting the reinstatement of her license.

Bud Searcy is the Academy Director of the Mission. Mr. Searcy wrote a letter dated April 8, 2010. In his letter, Mr. Searcy confirmed that petitioner and Mr. Sharkey were in the Mission's Couples Group for one year. He describes both of them as "extremely interactive." According to Mr. Searcy, both petitioner and her husband "grew tremendously. They learned how to communicate without arguing. They were growing in their ability to trust each other and take responsibility for themselves."

Robert Alanis, Licensed Clinical Pastoral Counselor, was the counselor of the Mission's Couples Group. He submitted a letter dated April 2, 2010. In his letter, Mr. Alanis describes the "tremendous change" he saw in petitioner by the end of the one-year counseling. According to Mr. Alanis, petitioner "now has a greater understanding and acceptance of self that has helped her to become productive as a person of value."

Reverend Pete Untalon, M.A., MFT, is the Senior Pastor at Potter's Church. Reverend Untalon met petitioner while he was a Senior Chaplain at Valley State Prison for Women. Petitioner was a faithful weekly participant at chapel services. Upon petitioner's release from prison, she and Mr. Sharkey became "leaders" in Reverend Untalon's church. Reverend Untalon has seen "tremendous spiritual and personal growth" in petitioner. Reverend Untalon "strongly" recommends that petitioner's license be reinstated.

Dale Sharkey is petitioner's father-in-law. He submitted a letter dated April 13, 2010. According to Mr. Dale Sharkey, the "love and compassion [petitioner] showed [his] son was a positive influence in his life, and eventually led him to overcome his addiction." He is thankful for petitioner leading his son "on the road to recovery which saved his life."

Beatrice Tapiz was the Director of Staff Development at Raintree. Carol Wilson is the Social Service Coordinator at Raintree. Maria Aguilar, LVN, was the lead charge nurse at Raintree. Ms. Wee was Raintree's Director of Nursing. They all wrote letters complimenting petitioner as a competent, caring and compassionate nurse.

Petitioner also received letters of support from Jim T. White, her landlord, and friends Judy Moser and Janae Bibey, CNA.

13. In California Code of Regulations, title 16, section 2522, the Board has adopted rehabilitation criteria to be considered when determining whether a petition for reinstatement should be granted.²

² California Code of Regulations, title 16, section 2522 provides:

Rehabilitation Criteria.

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.

14. There was no evidence that petitioner has ever been convicted of any crimes other than the one described in the Accusation. There was also no evidence that petitioner has ever had any drug or alcohol addictions. Since the revocation of her license, she was cited for driving while using a cellphone. She has paid that traffic citation. Except for this traffic citation and the wrongdoing alleged in the Accusation, there was no evidence that petitioner has engaged in any other illegal conduct. She is very actively involved in her church. Since her license was revoked, she has participated in continuing education. When all the evidence and the factors set forth in California Code of Regulations, title 16, section 2522 are considered, petitioner presented clear and convincing evidence that it would not be contrary to public health, safety or welfare to reinstate her license on a probationary basis for three years.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2878.7, subdivision (a)(1), a licensed vocational nurse whose license has been revoked may petition the Board for reinstatement three years after the effective date of the disciplinary order. Section 2878.7, subdivision (b), provides that, "The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition."

2. As set forth in the Finding 14, petitioner presented clear and convincing evidence that it would not be contrary to public health, safety or welfare to reinstate her license on a probationary basis for three years pursuant to the terms and conditions set forth below.

ORDER

The Petition for Reinstatement of petitioner Samantha Sharkey is GRANTED and Vocational Nurse License No. VN 156354 is reinstated, but the reinstated license is revoked, the revocation is stayed for three (3) years, and petitioner is placed on probation on following terms and conditions:

1. **OBEY ALL LAWS.** Petitioner shall obey all federal, state and local laws, including all statutes and regulations governing the license. Petitioner shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five (5) days of occurrence.

To ensure compliance with this condition, petitioner shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within thirty (30) days of the

(13) Other rehabilitation evidence.

effective date of the decision, unless the Board determines that fingerprints were previously submitted by the petitioner to the Board.

Petitioner shall also submit to the Board a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the Decision.

If petitioner is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. **COMPLIANCE WITH PROBATION PROGRAM.** Petitioner shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of petitioner's compliance with the Probation Program.

Upon successful completion of probation, petitioner's license will be fully restored.

3. **SUBMIT WRITTEN REPORTS.** Petitioner shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to petitioner's compliance with all the conditions of the Board's Program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, petitioner shall provide a list of all states and territories where she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Petitioner shall provide information regarding the status of each license and any change in license status during the period of probation. Petitioner shall inform the Board if she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Petitioner shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which she has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. **NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S).** Petitioner shall notify the Board, in writing, within five (5) days of any change in address or telephone number(s).

Petitioner's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. **NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE.** Petitioner shall notify the Board, in writing, within five (5) days, if she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If petitioner resides or practices outside of California, the period of probation shall be automatically

extended for the same time period she resides or practices outside of California. Petitioner shall provide written notice to the Board within five (5) days of any change of residency or practice.

Petitioner shall notify the Board, in writing, within five (5) days, upon her return to California.

6. **MEETINGS WITH BOARD REPRESENTATIVE(S).** Petitioner shall appear in person at meetings as directed by the Board or its designated representatives.

7. **NOTIFICATION TO EMPLOYER(S).** When currently employed or applying for employment in any capacity in any health care profession, petitioner shall notify her employer of the probationary status of petitioner's license. This notification to petitioner's current health care employer shall occur no later than the effective date of the Decision. Petitioner shall notify any prospective health care employer of her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Petitioner shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Petitioner shall notify the Board, in writing, of any difficulty in securing employer reports within five (5) days of such an event.

Petitioner shall notify the Board, in writing, within five (5) days of any change in employment status. Petitioner shall notify the Board, in writing, if she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. **EMPLOYMENT REQUIREMENTS AND LIMITATIONS.** Petitioner shall work in her licensed capacity in the state of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

Petitioner shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Petitioner shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. **SUPERVISION REQUIREMENTS.** Before commencing or continuing employment in any health care profession, petitioner shall obtain approval from the Board of the supervision provided to petitioner while employed.

Petitioner shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. **COMPLETION OF EDUCATIONAL COURSE(S).** Petitioner, at her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify petitioner of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of assigned coursework, petitioner shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, petitioner shall submit "original" completion certificates to the Board within thirty (30) days of course completion.

11. **MAINTENANCE OF VALID LICENSE.** Petitioner shall, at all times, maintain an active current license with the Board including any period of suspension.

Probation shall not commence until a license is issued by the Board. Petitioner must complete the licensure process within two (2) years from the effective date of the Board's decision.

Should petitioner's license expire, by operation of law or otherwise, upon renewal or reinstatement, petitioner's license shall be subject to any and all conditions of this probation not previously satisfied.

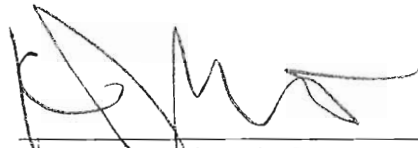
12. **LICENSE SURRENDER.** During probation, if petitioner ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, petitioner may surrender her license to the Board. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender:

- Three (3) years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- One (1) year for a license surrendered for a mental or physical illness.

13. **VIOLATION OF PROBATION.** If petitioner violates the conditions of her probation, the Board, after giving petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of petitioner's license. If during probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

DATED: August 12, 2010



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings